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## PARTICULARITIES OF RESOLVING LABOUR DISPUTES RELATED TO COMPENSATION FOR DAMAGES

**Abstract. Purpose.** The purpose of the article is to reveal the particularities of resolving labour disputes related to compensation for damages. **Results.** Compensation for damage caused by an employee to an employer often leads to disagreements between the parties to the relevant legal relations. This leads to labour disputes, which are resolved in court. A labour dispute in the context of the issues presented is a disagreement between an employee and an employer over: a) the existence and/or degree of the employee's fault; b) the amount of damage caused by the employee; c) the procedure for compensation for damage; d) failure to comply with the requirements of applicable law by the parties to the relevant labour relations. The article analyses comprehensively the judicial practice related to the resolution of labour disputes, including those of a property nature. Relying on the review of scientific perspectives of scholars, provisions of legislation in force and law application practice, the author highlights the particularities of resolving labour disputes related to compensation for damages. It is emphasised that a statement of claim, complaint, petition or any other document shall be submitted to the court through the post office, as a valuable letter with an inventory of the attachment or a registered letter (it is necessary to keep a document (payment receipt) issued by the post office confirming the sending of documents; it should be remembered that the day of the relevant action is the day the document is submitted to the post office, which is determined by the postmark, and not the day the letter is received by the court) or personally through the court office during working hours to the court employee who receives and registers incoming correspondence (general office). **Conclusions.** The author concludes that the resolution of disputes related to compensation for damage caused by an employee to an employer has a number of specific features, among which the following should be highlighted: the existence of a special set of grounds for resolving such cases in court (in particular, the amount of damage shall exceed the employee's average monthly salary); the specific subject matter of a labour dispute; the need for the parties to the dispute to provide and collect evidence on their own; in addition, the courts shall take a special approach to the assessment of such evidence; the actual absence of effective mechanisms for pre-trial resolution of such labour disputes.

**Key words:** labour disputes, dispute resolution, civil courts, compensation for damages, labour law.

### 1. Introduction

Compensation for damage caused by an employee to an employer often leads to disagreements between the parties to the relevant legal relations. This leads to labour disputes, which are resolved in court. A labour dispute in the context of the issues presented is a disagreement between an employee and an employer over: a) the existence and/or degree of the employee's fault; b) the amount of damage caused by the employee; c) the procedure for compensation for damage; d) failure to comply with the requirements of applicable law by the parties to the relevant labour relations. Commonly, labour disputes are resolved

by labour dispute commissions and courts. For the purposes of this research, we will analyse the judicial procedure for resolving such disputes, which is directly provided for in Article 136 of the Labour Code of Ukraine. Given the particularities of this issue, the procedure for resolving labour disputes related to compensation for damages has its own specific features.

Some problematic issues related to compensation for damage were considered in the scientific works by: L.V. Avramenko, S.D. Husarev, M.P. Donchyk, V.Ye. Zhrebkin, I.F. Koval, S.Yu. Liubimova, O.V. Petryshyn, I.A. Rymar, O.D. Tikhomirov, M.V. Tsvik, H.P. Yarmaki,

and many others. However, despite the considerable number of scientific achievements, the legal literature reveals insufficient research on the particularities of resolving labour disputes related to compensation for damages.

That is why the purpose of the article is to reveal the particularities of resolving labour disputes related to compensation for damages.

## 2. The right to initiate proceedings in a civil case

It should be noted that the right to apply to court for judicial protection is a procedural institution that regulates the right to initiate proceedings in a civil case. The right to a fair trial is a legal institution of substantive and procedural law (Melnikov, 1969, p. 106). The general rules on employee liability are set out in Chapter IX of the Labour Code and the Regulations on the liability of workers and employees for damage caused to an enterprise, institution or organisation, approved by Decree No. 4204-IX of the Presidium of the Supreme Soviet of the USSR of 13 July 1976. These substantive law provisions define both the grounds and conditions for imposing liability on employees and the amount of such liability. When considering cases on employee liability for damage caused to the employer, other legal acts that define or clarify the procedure for applying certain provisions of Chapter IX of the Labour Code are also applied, in particular: the Law "On determining the amount of damages caused to an enterprise, institution or organisation by destruction (damage), shortage or loss of precious metals, precious stones and currency valuables" No. 217/95-VR of 6 June 1995, the Procedure for calculating the average salary approved by Resolution of the Cabinet of Ministers of Ukraine No. 100 of 8 February 1995; the List of positions and works to be filled or performed by employees with whom an enterprise, institution or organisation may conclude written agreements on full financial responsibility for failure to ensure the safety of valuables transferred to them for storage, processing, sale (release), transportation or use in the production process, approved by Resolution of the USSR State Labour Committee and the Secretariat of the All-Union Central Council of Trade Unions No. 447/24 of 28 December 1977; Model agreement on full individual financial responsibility, approved by Resolution of the USSR State Labour Committee and the Secretariat of the All-Union Central Council of Trade Unions No. 447/24 of 28 December 1977; List of works for which collective (brigade) financial responsibility may be introduced, approved by Order of the Ministry of Labour No. 43 of 12 May 1996; Model agreement on collective (brigade) financial

responsibility, approved by Order of the Ministry of Labour No. 43 of 12 May 1996; Procedure for determining the amount of losses from theft, shortage, destruction (damage) of material assets, approved by Resolution of the Cabinet of Ministers No. 116 of 22 January 1996 (Website of *Law and Business*, zib.com.ua).

The Labour Code stipulates that disputes over refusal to hire are also heard directly in district, city district, city or city district courts: 1) employees invited to work as part of a transfer from another enterprise, institution or organisation; 2) young specialists who have graduated from a higher education institution and are sent to work at the enterprise, institution or organisation in accordance with the established procedure; 3) pregnant women, women with children under the age of three or a disabled child, and single mothers if they have a child under the age of 14; 4) elected officials after the expiry of their term of office; 5) employees who have been granted the right of return employment; 6) other persons with whom the owner or his authorised body is obliged to conclude an employment contract in accordance with the applicable law (Code of Labour Laws of Ukraine, 1971).

With regards to the particularities of resolving labour disputes regarding compensation for damage caused by an employee in court, we note that the following are subject to court review: a) applications from the owner of an enterprise, institution, organisation or authorised body to an employee for compensation for damage in an amount exceeding the average monthly salary, as well as in an amount not exceeding this salary (exceeding, but the law establishes liability within the average monthly salary), if the compensation cannot be made by order of the owner or his/her authorised body by deduction from the salary (for example, if the employee terminates his/her employment with the company, due to the expiry of the period for issuing an order for deduction); b) applications of employees who disagree with the deductions made by the owner or his/her authorised body, or with the amount of deductions (Resolution of the Plenum of the Supreme Court of Ukraine "On judicial practice in cases of compensation for damage caused to enterprises, institutions, organisations by their employees" dated December 29, 1992 No. 14 with amendments and additions made by resolutions of the Plenum of the Supreme Court of Ukraine, 1997).

In addition, when deciding whether to initiate proceedings in a case, the courts should proceed from the fact that, pursuant to Articles 15 and 16 of the Civil Procedure Code, courts consider cases on protection of violated, unrec-

ognised or disputed rights, freedoms or interests arising from civil, housing, land, family, labour relations, as well as other legal relations, in civil proceedings, except where consideration of such cases falls within the competence of other bodies or courts. In connection with the above, courts should proceed from the fact that the criteria for distinguishing cases of civil jurisdiction from others are, first, the presence of a dispute over civil law (cases on claims arising from any legal relations, except for cases when such cases are considered in accordance with the rules of other legal proceedings), and second, the parties to this dispute (one of the parties to the dispute is usually an individual) (Generalisation of the practice of court application of the legislation regulating the material liability of employees for damage caused to the employer (Excerpt), 2015).

### 3. Resolving a labour dispute in court

As a general rule, in accordance with Article 233 of the Labour Code, an employee may file an application for resolution of a labour dispute directly with the court within three months from the date when he or she learned or should have learned of the violation of his or her right, and in cases of dismissal - within one month from the date of delivery of a copy of the dismissal order or from the date of issuance of the employment record. In case of violation of labour legislation, an employee has the right to file a lawsuit to recover wages due to him or her without any time limit (Code of Labour Laws of Ukraine, 1971; Prorok, 2020). As for the issues of compensation for damage, including non-pecuniary damage, by the owner of the enterprise or his authorised body, the employee may apply to the court no later than three months after the date when he or she learned or should have learned of the violation of his or her right. It should be noted that in case of missed deadlines established by Article 233 of the Labour Code for valid reasons, the court may renew these deadlines (Article 234 of the Labour Code) (Code of Labour Laws of Ukraine, 1971; Prorok, 2020).

A statement of claim, complaint, petition or any other document shall be submitted to the court: 1) through the post office, as a valuable letter with an inventory of the attachment or a registered letter. It is necessary to keep a document (payment receipt) issued by the post office confirming the sending of documents. It should be remembered that the day of the relevant action is the day the document is submitted to the post office, which is determined by the postmark, and not the day the letter is received by the court; 2) personally through the court office during working hours to the court employee who receives and registers incoming corre-

spondence (general office). Copies of the documents submitted to the court shall be stamped with the date of receipt and registration number (The official WEB-portal of the Federation of Trade Unions of the Vinnytsia Region, 2020).

It should be noted that in accordance with Article 120 of the Civil Procedure Code, the statement of claim shall be accompanied by: 1) evidence supporting the claim; 2) a power of attorney or other document confirming the authority of the representative, if the claim is filed by a representative (The official WEB-portal of the Federation of Trade Unions of the Vinnytsia Region, 2020). According to S.F. Safulka, evidence is any factual data established on the basis of explanations of the parties, third parties, their representatives interrogated as witnesses, witness testimony, written evidence, and material evidence, such as, audio and video recordings, expert opinions, and on the basis of which the court determines the presence or absence of circumstances justifying the claims and objections of the parties, and other circumstances relevant to the resolution of the case. Moreover, only those circumstances that are relevant to the decision in the case and in respect of which the parties and other persons involved in the case have a dispute are subject to proof. Circumstances admitted by the parties and other persons involved in the case, as well as recognised by the court as common knowledge, are not subject to proving (Sviatotskyi, Zakharchenko, Safulko, 2008). Therefore, proving is the process of establishing the objective truth in a case, which includes the collection, examination, evaluation and use of evidence. Evidence in a case of an administrative offence is carried out by the body (official) that carry out proceedings. On the one hand, proving serves to establish the facts and circumstances that took place, their essence and assessment of their significance for establishing the truth in the case, on the other hand, it is their recording in the manner prescribed by law and the forms of obtaining the results to give them the status of evidence. Data in the form of rumours, assumptions, even if they were obtained from a person summoned as a witness, expert, set out in a document, etc. cannot be considered as evidence (Yarmaki, 2015, p.116).

It should be noted that the judges in this category of cases had some difficulty in correctly determining the scope of relevant evidence. In order to correctly determine the scope of relevant evidence, courts should consider the explanations provided in paragraph 23 of Supreme Court Plenum Resolution No. 14, according to which in cases of damage compensation, the judge, regardless of the circumstances of the case, shall, in particular, decide whether the parties submit or request the submission of:

– accounting data and other documents on the existence and amount of direct actual damage, such as inventory materials, audit reports and accounting documents, acts and other documents on the shortage, damage, loss, destruction of property, conclusions of the commodity expertise bureau, certificates and other documents on the value of property, the amount of excessive cash payments, as well as the amounts spent on the acquisition, restoration of property, satisfaction of third-party claims, etc. If there is a need to conduct an accounting or other expert examination to determine the amount of damage and the circumstances of its infliction, it shall be appointed with due regard to the opinion of the persons involved in the case;

– evidence of the employee's culpable breach of duties under the employment contract and the existence of a causal link between his or her unlawful behaviour and the damage that occurred, the time of its discovery, the employee's explanations, acts and report notes of officials, materials of internal inspections, court verdict or decision of the investigating authority, order based on the results of the inspection of the case, conclusions of competent authorities or expert examination on the violations committed and the causes of damage, documents on the scope of the employee's work duties;

– other evidence relevant to determining the type of liability and the amount to be recovered, such as an agreement on full individual or collective (team) liability, a power of attorney or other one-time document for the employee to receive material assets under the report, data on damage caused by an employee in a state of intoxication, calculations of the distribution of damage between team members, certificates of the employee's tariff rate in case of team liability or his/her earnings for the two calendar months preceding the filing of claims for damages, in other cases, information about the employee's family, valuable property (house, car, etc.), subsidiary farm, other income; information about working conditions and storage of material assets, employee's memos on these issues (Website of *Law and Business*, 2020).

Resolution No. 14 of the Plenum of the Supreme Court of Ukraine "On judicial practice in cases of compensation for damage caused to enterprises, institutions, organisations by their employees" of 29 December 1992 states that courts should improve the preparation of cases for compensation for damage for trial and its efficiency. Meeting the requirements of Article 143 of the Civil Procedure Code, the judge, regardless of the circumstances of the case, shall, in particular, decide whether the parties submit or request the submission of:

– accounting data and other documents on the existence and amount of direct actual damage, such as inventory materials, audit reports and accounting documents, reports and other documents on shortage, damage, loss, destruction of property, and opinions of the commodity expertise bureau, certificates and other documents on the value of the property, the amount of excessive cash payments, as well as the amounts spent on the acquisition, restoration of property, satisfaction of third-party claims, etc. If there is a need to conduct an accounting or other expert examination to determine the amount of damage and the circumstances of its infliction, it should be appointed with due regard to the opinion of the persons involved in the case;

– evidence of the employee's culpable breach of duties under the employment contract and the existence of a causal link between his or her unlawful behaviour and the damage that occurred, the time of its discovery, the employee's explanations, acts and report notes of officials, materials of internal inspections, court verdict or decision of the investigating authority, order based on the results of the inspection of the case, conclusions of competent authorities or expert examination on the violations committed and the causes of damage, documents on the scope of the employee's work duties;

– other evidence relevant to determining the type of financial liability and the amount to be recovered, such as an agreement on full individual or collective (team) financial liability, a power of attorney or other one-time document authorising the employee to receive material assets against a report, data on the employee causing damage in a state of intoxication, calculations of the distribution of damage between team members, certificates of the employee's tariff rate in case of team liability or his/her earnings for the two calendar months preceding the claim for damages, in other cases, the composition of the employee's family, the employee's valuable property (house, car, etc.), minor farm, other income; data on working conditions and storage of material assets, employee's report notes on these issues (Resolution of the Plenum of the Supreme Court of Ukraine "On judicial practice in cases of compensation for damage caused to enterprises, institutions, organisations by their employees" dated December 29, 1992 No. 14 with amendments and additions made by resolutions of the Plenum of the Supreme Court of Ukraine, 1997).

#### 4. Conclusions

Thus, the conducted study enables to state that the resolution of disputes related to compensation for damage caused by an employee to an employer has a number of characteristic

features, among which the following should be highlighted:

- the existence of a special set of grounds for resolving such cases in court (in particular, the amount of damage shall exceed the employee's average monthly salary);
- the specific subject matter of a labour dispute;
- the need for the parties to the dispute to provide and collect evidence on their own;

- in addition, the courts shall take a special approach to the assessment of such evidence; In particular, in order to correctly determine the scope and content of relevant evidence, courts should consider the explanations provided in paragraph 23 of SC Plenum Resolution No. 14;
- the actual absence of effective mechanisms for pre-trial resolution of such labour disputes.

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## ОСОБЛИВОСТІ ВИРІШЕННЯ ТРУДОВИХ СПОРІВ, ПОВ'ЯЗАНИХ ІЗ ВІДШКОДУВАННЯМ ШКОДИ

**Анотація. Мета.** Мета статті полягає у з'ясуванні особливостей вирішення трудових спорів, пов'язаних із відшкодуванням шкоди. **Результати.** Відшкодування шкоди, завданої працівником роботодавцю, досить часто призводить до виникнення розбіжностей між сторонами відповідних правовідносин. Зазначене призводить до виникнення трудових спорів, які, відповідно, вирішуються в судовому порядку. Трудовий спір у контексті представленої проблематики являє собою розбіжність між працівником та роботодавцем щодо таких питань: а) наявності та/або ступеня вини

працівника; б) розміру шкоди, яка була завдана працівником; в) порядку відшкодування шкоди; г) невиконання вимог норм чинного законодавства сторонами відповідних трудових правовідносин. У статті здійснено комплексний аналіз судової практики, пов'язаної з вирішенням трудових спорів, зокрема й майнового характеру. З огляду на аналіз наукових поглядів учених, норм чинного законодавства та правозастосовної практики виокремлено особливості вирішення трудових спорів, пов'язаних із відшкодуванням шкоди. Наголошено на тому, що позовна заява, скарга, клопотання чи будь-які документи подаються до суду через поштове відділення, як цінний лист з описом вкладення або рекомендований лист (у цьому випадку необхідно зберігати документ (квитанцію про оплату), який видається на пошті, що підтверджує відправлення документів; також варто пам'ятати, що днем вчинення відповідної дії вважається день здачі документа на пошту, який визначається за поштовим штемпелем, а не день надходження листа до суду) або власноруч через канцелярію суду в робочий час працівнику суду, який веде прийом і реєстрацію вхідної кореспонденції (загальна канцелярія). **Висновки.** Зроблено висновок, що вирішення спорів, пов'язаних із відшкодуванням шкоди, завданої працівником роботодавцю, має низку характерних особливостей, а саме: наявність спеціального набору підстав для вирішення подібних справ саме в судовому порядку (зокрема, сума шкоди має перевищувати середньомісячну заробітну плату працівника); специфічний предмет трудового спору; необхідність надання та збирання доказів сторонами спору самостійно; обов'язок судів особливим чином підходити до оцінки вказаних доказів; фактична відсутність дієвих механізмів досудового вирішення такого виду трудових спорів.

**Ключові слова:** трудові спори, вирішення спорів, цивільні суди, відшкодування шкоди, трудове право.

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